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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, Plaintiff, v. METRO-GOLDWYN-MAYER PICTURES INC., and PARAMOUNT PICTURES CORPORATION, Defendants.	CASE NO. 2:17-cv-2704 COMPLAINT JURY TRIAL DEMANDED

NATURE OF THE CASE

1. This action is brought under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, for breach of a collective bargaining agreement to which Plaintiff American Federation of Musicians of the United States

and Canada ("AFM") and Defendants Metro-Goldwyn-Mayer Pictures Inc. ("MGM") and Paramount Pictures Corporation ("Paramount") are parties. The agreement sets forth the wages, terms, benefits and other conditions of employment applicable to musicians represented by AFM who are engaged by MGM and Paramount in the recording of motion picture film scores. MGM and Paramount violated the agreement in connection with the scoring of the 2016 theatrical motion picture BEN HUR, a film they co-produced, by failing to pay or cause their subcontractor to pay the wages, benefits and residual compensation due under the terms of the agreement to or on behalf of the bargaining unit musicians who recorded the score for that film. MGM and Paramount violated the agreement also by failing to fulfill reporting and studio access obligations expressly set forth in the agreement for purposes of ensuring compliance. The AFM is now suing to recover breach of contract damages, including all wages, benefits and residuals payable under the collective bargaining agreement.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the case and the parties pursuant to 29 U.S.C. § 185 and 28 U.S.C. § 1331.

3. Venue lies in this District pursuant to 29 U.S.C. § 185(a) and 28 U.S.C. § 1391(b).

PARTIES

4. The Plaintiff AFM is a labor organization representing professional musicians employed in the United States and Canada in all sectors of the music industry, including studio recording musicians employed in the scoring of theatrical motion pictures. AFM is a "labor organization representing employees in an industry affecting commerce" within the meaning of the LMRA.

5. The Defendant MGM is a motion picture producer with a principal place of business located at 245 North Beverly Drive, Beverly Hills, California 90210.

MGM regularly employs musicians represented by the AFM in the scoring of motion pictures in this District, and is an "employer" within the meaning of the LMRA.

6. The Defendant Paramount is a motion picture producer and distributor with a principal place of business located at 5555 Melrose Avenue, Hollywood, California 90038. Paramount regularly employs musicians repesented by AFM in the scoring of motion pictures in this District, and is an "employer" within the meaning of the LMRA.

STATEMENT OF FACTS

7. Since around 1946, AFM has represented professional studio recording musicians and music preparation personnel in collective bargaining with the major motion picture producers of Hollywood. In its capacity as exclusive bargaining agent, AFM has negotiated and administered a series of collective bargaining agreements with the producers, each called "Basic Theatrical Motion Picture Agreement" (hereinafter, "Agreement"), establishing the wages, benefits, terms and conditions of employment of musicians engaged in the scoring of motion picture films.

8. The most recently negotiated terms of the Agreement became effective on April 5, 2015, and will expire on April 4, 2018.

9. Both MGM and Paramount are signatory parties to the Agreement.

10. The terms of the Agreement are applicable to all bargaining unit musicians employed by producers in the State of California or elsewhere in the United States and Canada whose services are rendered in connection with the production of theatrical motion pictures.

11. The bargaining unit classifications covered by the Agreement include, among others, instrumentalists, arrangers, orchestrators, music copyists, synthesized keyboard programmers, and conductors.

12. Whenever signatory producers employ bargaining unit musicians in the United States or Canada in connection with the production of theatrical motion pictures, they are required by the Agreement to provide compensation pursuant to the compensation provisions of the Agreement, including those requiring the payment of wages, contributions to the American Federation of Musicians and Employers Pension Fund, contributions to health benefit funds, and residual revenue contributions to the Film Musicians Secondary Markets Fund, to or on behalf of the musicians so employed.

13. The Agreement includes mechanisms for ensuring signatory producers' compliance with the minimum compensation requirements and other conditions of employment of musicians under the Agreement. For example, the Agreement states,

> The duly authorized business representative of the Federation and any other representative duly authorized in writing by the Federation shall be furnished a pass to the studio. He/she shall be permitted to visit, during working hours, any portion of the studio necessary for the proper conduct of the business of the Federation.
>
> The Producer shall respond promptly to requests by the Federation through such representatives for information relating to Producer's performance of its duties and obligations under this Agreement.
>
> ...
>
> Producer agrees that individuals under personal service contract will be given an extra copy of such contract, which may be transmitted to the Federation. The terms of such personal service contract shall not be in violation of the terms of this Basic Agreement. The Producer will furnish the Federation Representative with the name or names of such

individuals who sign such personal service contracts.

14. Customarily, producers report the employment of musicians covered by the Agreement to AFM on a standardized report form, called a "B Form," which indicates the hours and services rendered by each musician, his or her wages, and the applicable contributions to the pension and health benefit funds.

15. The Agreement also expressly provides,

> In the event Producer subcontracts out any work that would otherwise be subject to this Agreement, Producer shall have the option either: (a) to obtain from the subcontractor an agreement to comply with the minimum compensation provisions in this Agreement, and cause such subcontractor to comply with such provisions; or (b) in the alternative, Producer shall make such payments.

16. On February 2, 2015, MGM and Paramount jointly announced that principal photography for the theatrical motion picture BEN HUR had begun in Italy.

17. AFM is informed and believes, and on that basis alleges, that in 2015, MGM and/or Paramount engaged the services of a third party doing business in California as BH Productions LLC to provide for the composing, arranging, orchestrating, recording, conducting, production and delivery of master recordings of a musical score for BEN HUR.

18. AFM is further informed, and thereon alleges, that in August 2015, BH Productions LLC entered into an all-inclusive fee contract with a California composer who, for a fixed lump sum payment, agreed not only to compose a film score for BEN HUR, but also to hire all instrumental musicians, arrangers, orchestrators, programmers, music preparation personnel, and conductors necessary to record the BEN HUR score and deliver the finished master recordings along with all other results and proceeds of his services as a complete package.

19. Pursuant to this all-inclusive fee "package" agreement with BH Productions LLC, the composer composed a score for BEN HUR and arranged the hiring in California of bargaining unit musicians to perform work in California that would otherwise be covered by the Agreement in connection with recording the score for BEN HUR.

20. In August 2016, MGM and Paramount registered copyright co-ownership in the motion picture BEN HUR with the United States Copyright Office, and BEN HUR was released in theaters in North America with producer credits given to MGM and Paramount.

21. With respect to the bargaining unit work perfomed in California for the scoring of BEN HUR, no authorized representative of AFM was furnished with a pass to the studio during working hours.

22. With respect to the bargaining unit work performed in California for the scoring of BEN HUR, MGM and Paramount have failed and refused: (1) to provide a B Form report to AFM; (2) to provide AFM with a list of names of individuals employed under personal service contracts; and (3) to provide information requested by AFM relating to the performance of their duties and obligations under the Agreement, including the hours and services rendered by each musician, his or her wages, and the applicable contributions to the pension and health benefit funds.

23. MGM and Paramount have failed and refused either to cause BH Productions LLC or the composer to comply with the compensation provisions of the Agreement, including those requiring the payment of wages, contributions to pension and health benefit funds, and residual revenue contributions to the Film Musicians Secondary Markets Fund, to or on behalf of the musicians employed in the scoring of BEN HUR, or in the alternative, to make such payments.

CAUSES OF ACTION

Count One

(Against Metro-Goldwyn-Mayer Pictures, Inc.)

Claim for Breach of Contract Under 29 U.S.C. § 185

24. The allegations contained in paragraphs 1 through 23 above are realleged and incorportated herein as if fully restated.

25. With respect to the motion picture released in 2016 entitled BEN HUR, MGM is a producer subject to the terms of the Agreement.

26. BEN HUR was scored in the State of California.

27. MGM failed to report to AFM the employment of bargaining unit musicians represented by AFM in the scoring of BEN HUR, and failed to pay or cause to be paid to or on behalf of such musicians all applicable wages, pension and health benefit fund contributions, and contributions to the Film Musicians Secondary Markets Fund that are required by the Agreement.

28. MGM's conduct described in paragraph 27 violated and breached the terms of the Agreement.

29. MGM's violation and breach of the Agreement has caused economic injury to the AFM and to musicians represented by AFM in an amount to be determined at trial.

Count Two

(Against Paramount Pictures Corporation)

Claim for Breach of Contract Under 29 U.S.C. § 185

30. The allegations contained in paragraphs 1 through 23 above are realleged and incorportated herein as if fully restated.

31. With respect to the motion picture released in 2016 entitled BEN HUR, Paramount is a producer subject to the terms of the Agreement.

32. BEN HUR was scored in the State of California.

33. Paramount failed to report to AFM the employment of bargaining unit musicians represented by AFM in the scoring of BEN HUR, and failed to pay or cause to be paid to or on behalf of such musicians all applicable wages, pension and health benefit fund contributions, and contributions to the Film Musicians Secondary Markets Fund that are required by the Agreement.

34. Paramount's conduct described in paragraph 33 violated and breached the terms of the Agreement.

35. Paramount's violation and breach of the Agreement has caused economic injury to the AFM and to musicians represented by AFM in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, AFM respectfully requests that this Court:

(1) Award damages against MGM and Paramount, jointly and severally, for all economic injuries suffered by AFM and the musicians represented by AFM as a result of MGM's and Paramount's breach of contract as set forth in Count One and Count Two;

(2) Order MGM and Paramount to make all payments due to musicians who performed work in the scoring of BEN HUR under the applicable terms of the Agreement, plus pre-judgment interest;

(3) Order MGM and Paramount to make all appropriate contributions to the American Federation of Musicians and Employers Pension Fund and applicable health benefit funds, and to the Film Musicians Secondary Markets Fund, that would have been made if MGM and Paramount had not violated their obligations under the Agreement; and

(4) Order such other and additional relief this Court may deem appropriate

to remedy MGM's and Paramount's breach of contract and to protect against future violations of the Agreement by MGM or Paramount in the production of theatrical motion pictures.

JURY DEMAND

AFM demands a trial by jury on all issues so triable.

DATED: April 10, 2017

Respectfully submitted,

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA

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